IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

St. Martin Investments, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
Bandit Industries, Inc.; and Smoracy, LLC.	)	
	)	
	)	JURY TRIAL DEMANDED
Defendants.	)	

COMPLAINT FOR PATENT INFRINGEMENT

For its Complaint against the above-named Defendants, Plaintiff St. Martin Investments, Inc. by and through its undersigned counsel, states and alleges as follows:

THE PARTIES

1. St. Martin Investments, Inc. ("Plaintiff" or "St. Martin") is a corporation incorporated in Wisconsin, and has its principal place of business located at 217 West Street, St. Martin, Minnesota 56376.

2. On information and belief, Defendant Bandit Industries, Inc. ("Bandit") is a corporation incorporated in Michigan, and has its principal place of business at 6750 Millbrook Rd., Remus, Michigan 49340 in the county of Mecosta.

3. On information and belief, Defendant Smoracy, LLC. ("Smoracy") is limited liability company organized in Michigan, and has its principal place of business

at 6750 Millbrook Rd., Remus, Michigan 49340 in the county of Mecosta. (Smoracy and Bandit collectively "Defendants").

4. Based on publically available records, Bandit and Smoracy share a registered business address.

5. Based on publically available records, Bandit and Smoracy share the same registered agent.

JURISDICTION, VENUE, AND LITIGATION HISTORY

6. This is a case for patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271 and 281–285.

7. This Court has federal question subject matter jurisdiction over the matter in controversy under 28 U.S.C. §§ 1331 and 1338(a) because the claims alleged herein arise under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq*.

8. On information and belief, Defendants are both either incorporated or organized in Michigan and have their principal place of business within this district.

9. Upon information and belief, both Defendants' registered office addresses are within this district.

10. This Court has personal jurisdiction over Defendants by virtue of their location in this district.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

12. On October 5, 2016 Rotochopper, Inc. the previous assignee of U.S. Patent No. 6,207,228 sued Bandit for patent infringement in the District of Minnesota in the

case docketed *Rotochopper, Inc. v. Bandit Industries, Inc.* 16-cv-3368 (DWF/LIB). The allegations in that lawsuit relate to allegations of patent infringement by the same product and method as in the present lawsuit.

13. Bandit moved to dismiss for lack of personal jurisdiction.

14. The District of Minnesota granted Bandit's motion to dismiss for lack of personal jurisdiction and dismissed the case without prejudice on May 4, 2017.

15. St. Martin and Rotochopper, Inc. share at least one common officer and have the same business address.

BACKGROUND

16. On March 27, 2001, the United States Patent and Trademark Office duly issued U.S. Patent No. 6,207,228 ("the '228 Patent"), entitled Concurrent Fragmentation and Impregnation Machine and Processing to inventors Vincent G. Hundt and Frederick G. Peltz. A true copy of the '228 Patent is attached hereto as Exhibit A.

17. St. Martin is the owner by assignment of the entire right, title, and interest in the '228 Patent.

18. Upon statements presented in Bandit's memorandum in support of its motion to dismiss the action venued in Minnesota, Defendant Smoracy manufactures horizontal grinder products.

19. Defendant Bandit sells and offers to sell, *inter alia,* horizontal grinder products, stump grinders, hand fed chippers, and whole tree chippers.

20. Defendants' horizontal grinder product manufactured or made by Smoracy and sold by Bandit is marketed and sold under the trademark "The Beast".

21. Defendants offer a separate coloring system for use with its products, including horizontal grinder products.

22. Defendants' coloring system has been marketed under the trademark "Color Max".

23. Defendants' coloring system, in conjunction with the horizontal grinder product, at times marketed as "The Beast" (collectively "the infringing product and method") infringes the '228 patent.

24. Upon information and belief, the infringing product and method impregnates materials with an agent while concurrently impregnating, suspending, and/or fragmenting the materials in a turbulent fragmenting zone.

25. Upon information and belief, the impregnated agent includes, at minimum, a colorant.

26. Upon information and belief, the infringing product and method also includes a screen for, at least, grating and further fragmenting the material within the fragmentation zone.

27. Defendant Bandit has advertised alternative products and methods that do not impregnate materials in the turbulent fragmenting zone, and has represented to St. Martin that it does not offer any products and methods that impregnate materials in the turbulent fragmenting zone.

28. Upon information and belief, Defendants have, covertly, demonstrated and sold the infringing product and method.

29. Upon information and belief, Defendants have also publically advertised the infringing product and method and demonstrated it to customers.

30. Defendants have been on notice of the ‘228 patent since at least as early as 2002.

31. In or about 2002, Rotochopper, Inc. informed Defendant Bandit that it was offering products and methods that infringe the ‘228 patent.

32. In or about 2002, Rotochopper, Inc. demanded that Defendant Bandit immediately cease marketing and selling products and methods that infringe the ‘228 Patent.

33. In or about 2002 Defendant Bandit represented to Rotochopper, Inc. that it would immediately cease marketing and selling all infringing products and methods.

34. Despite its representation to Rotochopper, Inc. Defendants continue to manufacture, market, and sell the infringing product and method.

35. Defendants’ manufacture, marketing, and sale of the infringing product and method has been within 6 years of the filing of the present complaint as well as the filing of the lawsuit venued in Minnesota.

36. Defendants’ infringing activities aforesaid, and described further below, have caused, and will continue to cause, substantial injury and damage to St. Martin, in an amount to be determined at trial.

37. St. Martin has been and will continue to be irreparably harmed by Defendants’ infringing activities described herein, unless permanently enjoined by order of this Court.

38. Defendants' infringing activities aforesaid, and described further below, have been without authority or license from St. Martin.

39. St. Martin has no adequate remedy at law.

COUNT I—DIRECT INFRINGEMENT OF U.S. PATENT NO. 6,207,228

40. The foregoing allegations are incorporated herein by this reference as though fully set forth herein.

41. By making, selling, offering for sale, importing and/or using the infringing product and method the Defendants have infringed the issued claims of the '228 Patent, literally and/or under the doctrine of equivalents.

42. On information and belief, Defendants' infringement of claims of the '228 Patent has been in wanton disregard for St. Martin's right to exclude others from making, importing, selling, offering for sale and/or using the invention embodied within the '228 Patent.

43. Defendants' infringement of claims of the '228 Patent has caused, and will continue to cause, substantial injury and damage to St. Martin, in an amount to be determined at trial.

44. St. Martin has been and will continue to be irreparably harmed by Defendants' deliberate infringement of the '228 Patent, unless permanently enjoined by order of this Court.

45. On information and belief, based on the allegations set forth herein and their making, importing, selling, offering for sale and/or using one or more of the respective infringing product and method, Defendants are liable for infringing the '228

Patent literally and/or under the doctrine of equivalents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. To enter judgment that each Defendant has directly infringed the '228 Patent;

B. To enter judgment that each Defendant has committed willful infringement of the '228 Patent;

C. A judgment against each Defendant and in favor of St. Martin for an award of monetary damages sufficient to compensate St. Martin for all of its substantial losses and harm suffered as a consequence of Defendant's infringement of the '228 Patent but in no event less than a reasonable royalty amount;

D. A judgment against each Defendant and in favor of St. Martin for an award trebling St. Martin's damages herein, ordering each Defendant to pay pre-judgment and post-judgment interest, declaring this case to be "exceptional," and ordering each Defendant to pay St. Martin's reasonable costs and attorneys' fees in prosecuting this action;

E. An order permanently enjoining each Defendant and its officers, agents, employees and other persons acting in concert or participation with it, from making, using, selling or offering to sell the infringing product and method and from importing same into the United States, and from otherwise infringing the claims of the '228 Patent in violation of 35 U.S.C. § 271; and

F. Such other and further relief as the Court deems just and proper.

Dated: May 24, 2017

HELLMUTH & JOHNSON, PLLC

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ATTORNEYS FOR ST. MARTIN

DEMAND FOR JURY TRIAL

Plaintiff St. Martin Investments, Inc.,, Inc by and through its attorney, Alexander J. Farrell, Hellmuth and Johnson, PLLC, demands a trial by jury on all issues so triable.

Dated: May 24, 2017

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